IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 23585 of 2011
DATE OF DECISION :- November 17, 2015

Union of India through the Secretary, Ministry of Finance, Department of Revenue, New Delhi and another.

...Petitioners

Versus

Subhash Kumar and another ...Respondents

CORAM: HON'BLE MR.JUSTICE M.JEYAPAUL

HON'BLE MR. JUSTICE DARSHAN SINGH

Present:- Mr. IPS Doabia, Advocate for the petitioners.

Mr. R.K. Malik, Sr. Advocate
with Mr. Vijay Dahiya, Advocate for the respondents.

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1. Whether Reporters of local papers may be allowed to see the judgment? Yes/No
2. To be referred to the Reporters or not? Yes/No
3. Whether the judgment should be reported in the digest? Yes

M.JEYAPAUL, J.

1. The 1st respondent Subhash Kumar was serving as Commissioner of Income Tax (A) at Bhopal. His Annual Confidential Reports (ACR) for the financial years 2005-06 and 2006-07 were assessed by the reporting Authority as 'Good'. It was belatedly communicated to him in the aftermath of the memorandum issued by

the Department of Personnel and Training (Dopt) on 13.4.2010 that ACRs below the bench mark for the next promotion of the officer should be communicated to the officer. The 1st respondent submitted his representation on 13.8.2010 against recording of his ACR as 'Good'. The competent Authority rejected the representation and confirmed the ratings in the ACR for the period 2005-06 and 2006-07 as 'Good' vide his order dated 28.9.2010.

2. The 1st respondent challenged the above order passed by the competent Authority before the learned Central Administrative Tribunal, Chandigarh Bench, Chandigarh. The learned Tribunal quashed the impugned order passed by the competent Authority on 28.9.2010 and directed the competent Authority to decide the representation afresh in the light of the directions issued by it. Union of India has challenged the order passed by the learned Tribunal.

3. Heard the submissions made on either side.

4. On a careful perusal of the impugned order passed by the competent Authority on 28.9.2010, we find that neither the Reporting Officer nor the Reviewing Officer was in service at the time when the representation made by the 1st respondent was disposed of by the competent Authority. Had such a bench mark for promotion been in vogue at the time when the ACRs for the financial years 2005-06 and 2006-07 were recorded by the Reporting Officer, the latter would have definitely thought over twice before recording such a rating which would deny promotion itself to the officer. At any rate,

comments/remarks from the Reporting Officer/Reviewing Officer on an elaborate representation made by the 1st respondent could not be obtained by the competent Authority before disposing of the said representation. Further, the competent Authority had noted an important aspect that there had been some improvement in performance shown by the 1st respondent during the financial year 2006-07. Under such circumstances, we are at a loss to understand as to why the competent Authority had not thought it fit to upgrade the rating recorded in the ACR for the financial year 2006-07.

5. Yet another development also had engaged the attention of the Bench. The Tribunal in fact directed the competent Authority to consider the representation within one month from the date of the judgment, failing which the impugned entries would not impede consideration of the 1st respondent for promotion. In fact, the Writ petitioners filed an application before the learned Administrative Tribunal seeking two months' time for compliance of the above directions but unfortunately they having not complied with such a direction and failed to convince the learned Administrative Tribunal for extension of two months' time for passing order on the representation on an objective consideration, filed the present Writ Petition.

6. The impugned order passed by the competent Authority has not adverted to the elaborate representation made by the 1st respondent. In our considered view, the Tribunal has rightly directed

the competent Authority to consider the representation and pass orders in the light of the directions issued by it.

7. We find that there is no merit in the Writ Petition. Therefore the impugned order passed by the Tribunal is confirmed and the competent Authority is directed to dispose of the representation dated 23.8.2010 and 24.8.2010 made by the 1st respondent in an objective manner in the light of the directions issued by it within one month from the date of this judgment, failing which the 1st respondent shall be considered for promotion irrespective of such an entry found in the ACRs for the financial years 2005-06 and 2006-07.

8. The Writ Petition is accordingly dismissed with the above directions.

(M. JEYAPAUL)
JUDGE

(DARSHAN SINGH)
JUDGE

November 17, 2015
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